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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

TURKEY

[24 April 1990]

PART I

INFORMATION OF A GENERAL NATURE

A. General legal framework

1. The constitutions of Turkey which came into force after the declaration of the Republic, on 29 October 1923, unexceptionally banned torture and ill-treatment of people. In fact, article 73 of the 1924 Constitution and article 14 of the 1961 Constitution stipulated that nobody would be subjected to torture and ill-treatment and that there would be no penalty violating human dignity. Article 17/3 of the present 1982 Constitution, which came into force in a public referendum of 7 November 1982, stipulates as follows:

> "No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity."

2. Moreover, the principle of respect to human rights is also mentioned in article 2 of the Constitution in characterizing the democratic, secular and social State of law. Article 10, which bears the title "Equality before law", provides that all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. The same article also stipulates that no privilege shall be granted to any individual, family, group and class and that State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

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3. The rights and duties of the individuals are formulated in articles 17-40 of the Second Chapter which has the same heading.

4. The Turkish Constitution accepts, in principle, the possibility that if a person employed in public services, irrespective of his position or status, finds an order given by his superiors to be contrary to the provisions of laws, regulations or by-laws, he shall not carry it out. The person who executes such an order shall not evade responsibility (art. 137). On the other hand, the law on Public Officials of 23 July 1965, No. 657, foresees that all public officials should state in their inaugural oath that "they will carry out their duties with a sense of respect to human rights and responsibility to the Republic of Turkey which is a national, democratic, secular State of law based on the fundamental principles of the Constitution". Articles 11 and 13 of the same law state, respectively that "An order which in itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility." and "People who are unjustly treated by public officials can bring a lawsuit directly to the public institution concerned which, in turn, has a right of recourse to the incriminated official." Thus, in the Turkish legal system, excessive deeds of public officials are considered operational defects for which the State is directly responsible.

5. Article 19 of the Constitution, entitled "Personal liberty and security", clearly defines the conditions in which individuals against whom there are strong indications of having committed an offence can be arrested by decision of a judge. Moreover, the same article provides for the following:

(a) Notification to individuals arrested or detained of the grounds for their arrest or detention and the charges against them;

(b) Appearance before a judge within 48 hours and within 15 days in the case of offences committed collectively;

(c) Notification of the situation of the person arrested or detained to the next of kin, except in cases where necessities pertaining to the risks of revealing the scope and subject of the investigation compels otherwise;

(d) The right of the detained or arrested person to request to be tried within a reasonable time or to be released during investigation or prosecution;

(e) The right of the person deprived of his liberty, to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding his situation and for his release if the restriction placed upon him is not lawful (habeas corpus).

6. In the light of this constitutional principle, which was also found in the preceding 1961 Constitution, the law of 7 May 1964 on Indemnifying People who are Unlawfully Arrested or Detained, No. 466, was adopted. According to this law, the following persons are entitled to receive an indemnity from the State:

(a) Those who are unlawfully detained or arrested or whose detention period is unlawfully prolonged;

(b) Those who are not promptly notified in writing of the grounds for their arrest or detention and the charges against them;

(c) Those who are detained or arrested, but not brought before a judge in the period specified in the Constitution;

(d) Those who are exceedingly deprived of their liberties without the decision of a judge;

(e) Those who are detained or arrested, but whose situation have not been immediately notified to the next of kin;

(f) Those who are lawfully detained or arrested, but later released on grounds that there is no need for further investigation or for a legal proceeding or upon acquittal;

(g) Those who are condemned, but whose imprisonment sentences are less than their total period of detention or those who are condemned to a fine.

7. The principles relating to offences and penalties are formulated in article 38 of the Constitution. According to this article:

(a) Penalties and security measures in lieu of penalties shall be prescribed only by law (nulla poena sine lege);

(b) No one shall be held guilty until proven guilty in a court of law;

(c) No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence;

(d) Criminal responsibility shall be personal;

(e) The administration shall not impose any sanction resulting in restriction of personal liberty.

8. Article 74 of the Constitution, entitled "Right of petition" states that "citizens have the right to apply in writing to the competent authorities and to the Grand National Assembly of Turkey with regard to requests and complaints concerning themselves or the public. The result of the application shall be made known to the petitioner in writing". The way of exercising this right is determined in Law No. 3071 of 1 November 1984.

9. The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs and administrative authorities and other agencies and individuals. Laws shall not be in conflict with the Constitution (art. 11). In order to substantiate this principle, a Constitutional Court was established which took a primus inter pares place among the higher courts of the judiciary (art. 146). The Constitutional Court examines the constitutionality in respect of both form and substance of laws, decrees having force of law and the rules of procedure of the Grand National Assembly (art. 148). The President of the Republic, the parliamentary groups of the party in power and of the main opposition party and a minimum of one fifth of the total number of members of the Grand National Assembly (90 members) have the right to apply for annulment action to the Constitutional Court (art. 150). Furthermore, if a court which is trying a

case finds that the law or the decree having force of law which is to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the considertion of the case until the Constitutional Court decides on this issue.

10. According to the Constitution, judicial power is exercised by independent courts on behalf of the Turkish nation (art. 9). The principles regarding independence of the courts and security of tenure of judges and public prosecutors are defined in the Third Part of the Constitution, entitled "Judicial Power" (arts. 138-160). Accordingly, no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, or send them circulars, make recommendations or suggestions. Also, no question can be asked, debates held or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial. Legislative and executive organs and the administration are obliged to comply with courts decisions (art. 138).

11. Ordinary, administrative and military justice are organized separately in the Turkish legal system. In the light of article 142 of the Constitution, the organization, functions and jurisdictions of the courts, their functioning and trial procedures are regulated by law:

(a) The minor courts for petty offences, courts of first instance, criminal courts and the Supreme Court of Appeal which re-examines the decisions of the preceding courts, constitute all together the judiciary;

(b) Moreover, in the light of article 125 of the Constitution, which states "recourse to judicial review shall be open against all actions and acts of the administration", administrative tribunals, tax tribunals and district administrative tribunals were constituted. The Council of State is the supreme court of appeal in the field of administrative justice;

(c) Military justice is exercised by military courts and military disciplinary courts. These courts have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military places, or for offences connected with military service and duties (art. 145). Military courts also have jurisdiction to try non-military persons for military offences specified in the special law, and for offences committed while performing their duties specified by law, or against military personnel in military places specified by law. The Military High Court of Appeals is the last instance for reviewing decisions and judgements given by military courts.

12. In case a person forwards a warning or complaint to public prosecutors on the occurrence of torture or ill-treatment, public prosecutors are obliged to launch an investigation. Public prosecutors can also ex officio start an investigation upon receipt of any information about torture or ill-treatment, regardless of whether there is a complaint or not. If the investigation leads to a legal proceeding, the victim of torture can participate in the case as an intervenor. The victim can also demand indemnity for pecuniary loss and mental anguish, either in the criminal case mentioned above, or in a separate case for indemnity. Moreover, those who suffer a loss because of a failure of duty of a public official or institution can claim indemnity by an action for damages against the institution concerned.

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B. The international conventions whereto Turkey is a party

13. Turkey adopted the Universal Declaration of Human Rights which was adopted on 10 December 1948 by the General Assembly of the United Nations, by Decree No. 9119 of 6 April 1949 of the Council of Ministers. On the other hand, Turkey ratified the European Convention on Human Rights by Law No. 6366, dated 10 March 1954. In Turkish law, international agreements and conventions duly put into effect become part of the legislation. Courts and other authorities can directly apply their clauses. Article 90 of the Constitution states that "International agreements duly put into effect carry the force of law".

14. In view of this standing principle, Turkey recognized on 28 January 1987 the competence of the European Commission of Human Rights to receive petitions from any person, non-governmental organization or group of individuals. She recognized as compulsory ipso facto and without special agreement the jurisdiction of the European Court of Human Rights (Decree No. 89/14563 of the Council of Ministers, dated 25 September 1989). Turkey ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (Law No. 3411, dated 25 February 1988.) Turkey also ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Law No. 3441, dated 21 April 1988).

15. As regards the latter convention, Turkey recognized at the same time with her ratification, the competence of the Committee against Torture to receive and consider communications both from a State Party (art. 21/1) and from or on behalf of individuals subject to her jurisdiction (art. 22/1), claiming that she is not fulfilling her obligations under the Convention.

PART II

INFORMATION IN RELATION TO ARTICLES IN PART I OF THE CONVENTION

Article 2

16. In parallel with the Constitution which forbids torture and ill-treatment (art. 17/3), crimes against the physical and psychological security and integrity of the individual are defined and subjected to punishment in the relevant articles of the Penal Code.

17. According to the Penal Code, corporal actions and conducts causing bodily pain without the intention of killing or mental disorder are crimes which require imprisonment sentences from 6 months to 10 years and fines, depending on the incident and the loss incurred (arts. 456-460 of the Penal Code). Bodily pain not only covers beating or injuring, but also physical and moral actions and conducts (Decision No. 374/137 of the First Criminal Department of Supreme Court of Appeal, dated 14 April 1938). Penalties become more rigorous in parallel with the gravity of bodily pain (according to whether the bodily injury is permanent or temporary or to period of loss of work or to the instruments used in committing the crime). Victims of such felonies can claim indemnity for pecuniary loss and mental anguish in the criminal court (art. 467 of the Penal Code).

18. Article 135 of the Code of Criminal Procedure gives the suspect the right to remain silent in an investigation carried out before a judge. Articles 243-251 of the Penal Code categorically ban torture and ill-treatment and foresee certain penalties against those who perpetrate such misdeeds. "Whoever, being a chief or member of a court or council or a public officer tortures an accused person in order to make him confess his offence, shall be punished by heavy imprisonment for not more than five years and shall be disqualified from holding public office, temporarily or for life" (art. 243). "Those persons authorized to use force and all police officers who, while performing duty or executing their superiors' orders, threaten to treat badly or to cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for not less than three months nor more than three years and shall be temporarily disqualified from holding public office" (art. 245). Besides the relevant clauses of the Penal Code, article 8 of the Disciplinary Regulations of Police, as amended by the Council of Ministers' Decision No. 83/6883 of 26 July 1983 states that "the security officials who torture or ill-treat those who visit or who are brought to police stations shall be disqualified from holding public office for life".

19. The above-mentioned penalties against torture and ill-treatment are also applicable in state of emergency or martial law. Article 137 of the Constitution states that "An order which in itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility".

Article 3

20. Visits and residence of foreigners in Turkey are regulated by Law No. 5683, dated 15 July 1950. The principles related to residence of all foreigners, including political refugees, and the guidelines to be abided by them are found in this law. According to the law, the deportation of foreigners from Turkey is carried out by the Ministry of the Interior (art. 21). Turkey is a State Party to both the United Nations Convention relating to the Status of Refugees and the European Convention on Human Rights. As these conventions and the Convention against Torture are duly put into effect, they all carry the force of law. Turkey's geographical reserve to the 1951 Convention on Refugees is not a non-commitment on the principle of "non-refoulement". In fact, in many cases, people who sought asylum within the framework of the reserve were permitted to find a safe haven in Turkey.

21. The principles regarding extradition requests of foreign States are found in article 9 of the Penal Code. Extradition of a foreigner to a foreign State for political or related felonies is not accepted. If a foreign State requests extradition, the court of the first instance of the area in which the requested person resides in Turkey has to determine the citizenship of the person requested and the nature of the felony committed. If the court determines that the requested person is not a Turkish citizen and that the felonies are not political, military or related felonies, the Government may accept the request.

22. Turkey is a party to the 1957 European Convention on Extradition. Article 3/2 of the Convention stipulates that "Extradition shall not be granted if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the

purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that person's position may be prejudiced for any of these reasons". This clause, which bears the force of law, is being duly observed in answering extradition requests.

Article 4

23. To cause bodily pain is punished in article 456 of the Penal Code. According to the said article, whoever causes bodily pain or injures health or causes mental disorder of another without the intention of killing, is a criminal who has committed a battery. The more severe types of this crime are enumerated in the second and third paragraphs of article 456 as well as in article 457, whereas the inferior type in paragraph 4 of article 456.

24. According to the Penal Code, "battery" has three alternative components: Bodily pain, injury to health and mental disorder. The crime of battery requires imprisonment for six months to one year (art. 456/1). Where battery causes permanent weakness to either a person's senses or limbs, or permanent difficulty in talking, or a permanent trace in the face, or a bodily or mental sickness continuing for 20 or more days, or non-attendance at his usual occupation for the same period, or subjects one's life to danger, or causes premature delivery by a pregnant woman, the offender shall be prisoned for two to five years (art. 456/2). Where battery causes the victim to suffer a mental or bodily sickness which is definitely or probably incurable, or the loss of a hand or foot, or of the ability to talk, or sterility, or incapacity of a limb, or permanent alteration of the face, or miscarriage of child, the offender shall be punished by heavy imprisonment for 5 to 10 years (art. 456/3).

25. If the offence is committed by use of a hidden or manifest weapon, the punishment shall be increased by a third to one half (art. 457). If a public officer commits battery during the performance of his duty, the punishment prescribed by law for that felony shall be increased by one third to one half (art. 251). Apart from these, acts of misconduct in office and ill-treatment of individuals by public officers are subjected to penalties in the Third Part of the Penal Code, entitled "Felonies Against the Administration of Government".

26. Accordingly, a public officer who, by misuse of his authority, and in violation of laws and regulations, takes an arbitrary action regarding a person or a public officer or orders or causes others to order such an action, shall be punished by imprisonment for three months to one year (art. 228/1). A public officer who, while performing his duty, treats a person with undue severity and causes that person to disobey the provisions of laws or government orders, shall also be punished by imprisonment for three months to one year (art. 228/2). In the light of the definition of "torture" in article 1 of the Convention against Torture, torture or cruel, inhumane, degrading treatment to an accused person in order to make him confess his offence, is punished by heavy imprisonment for not more than five years and disqualification from holding public office, temporarily or for life (art. 243/1). Those persons authorized to use force and all police officers, who, while performing duty or executing their superiors' orders, threaten to treat badly or to cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations,

shall be punished by imprisonment for not less than three months not more than three years and shall be temporarily disqualified from holding public office (art. 245).

27. The Supreme Court of Appeal's interpretation of the articles of the Penal Code in its decisions is as follows: the main element in having recourse to article 243 should be the presence of torture, or cruel, inhumane and degrading treatment to an accused person in order to make him confess his offence. The victim should be an accused person and he should be forced to confess his offence. This main element differentiates article 243 from articles 228 and 245. In a case where the suspect is taken into custody for robbery, kept three days in custody and in the meantime beaten to confess his offence which causes seven days non-attendance at his usual occupation, article 243, rather than article 456 or 251, should be applied (Decision No. 3143/4070 of the 8th Criminal Department of the Supreme Court of Appeal on 19 June 1981).

28. Article 243, in comparison with article 245, answers a special case in that it cites the "motive" of the accused among the elements of crime. In other words, if the accused tortures or cruelly, inhumanely and degradingly treats somebody with the motive to make him confess his offence, article 243 should be applied. In our case, the beating of the suspect is a cruel, inhumane treatment to make him confess his offence. Then, the accused should be punished in accordance with article 243/1 (Decision No. E.1987/8-186, K.1987/423 of the Criminal Section of the Supreme Court of Appeal on 5 October 1987).

29. On the other hand, whoever, being a public officer, abuses his office in any manner other than described in the Code is punished by imprisonment for not less than one year, but not more than three years, depending upon the degree of the offence (art. 240). If a penitentiary or detention house official admits, without a judgement or warrant of arrest issued by proper agencies, a person to the penitentiary or detention house, or does not obey the judgement or decision issued by competent authorities for the release of a prisoner, he shall be punished by imprisonment for up to three years (art. 184). If the official has served a special purpose, then his punishment shall be increased by one sixth (art. 187).

Article 5

30. Article 3 of the Penal Code states as follows: "Whoever commits a crime in Turkey shall be punished in accordance with Turkish law, and a Turk, even if sentenced in a foreign country for the commission of a crime, shall be retried in Turkey". "A foreigner who has been sentenced in a foreign country for a crime, shall be tried in Turkey upon the request of the Minister of Justice." In the application of this article, the general principles of law, including that of non bis in idem are duly taken heed of.

31. The rules regarding the punishment of a crime committed by a Turkish citizen in foreign countries are found in article 5 of the Penal Code. According to the said article, if the crime is a felony (not misdemeanour) which does not fall into the scope of article 4 (felonies against the security of the Turkish Government), if the felony committed entails a punishment restricting liberty for a minimum period of three years in the Turkish law and if the accused is in Turkey, he will be punished in accordance with Turkish

laws. If the felony committed entails a punishment restricting liberty for a minimum authorized period of less than three years, the initiation of persecution may be upon the complaint of the injured party or the foreign Government.

32. The rules regarding the punishment of a crime committed by a foreigner in foreign countries are found in article 6.

(a) The crime is a felony falling outside the scope of article 4 and the felony is against Turkey or a Turk: if the felony committed entails a punishment restricting liberty for a minimum authorized period of one year in Turkish law, if the accused is in Turkey and if the Minister of Justice or the injured party request for the initiation of persecution, then the accused will be punished in accordance with Turkish laws.

(b) The felony is committed by a foreigner against another foreigner: if the act, according to Turkish law, entails a punishment restricting liberty for a minimum authorized period of not less than three years, if no extradition treaty exists or the extradition of the perpetrator is rejected either by the Government of the State in whose territory the felony was committed or by the State of which the offender is a citizen and if the Minister of Justice requests for the initiation of persecution, then, the accused will be punished in accordance with Turkish laws.

33. In articles 8, 9, 10 and 11 of the Turkish Code of Criminal Procedure, the jurisdiction of Turkish courts is specified:

(a) The trial of a criminal action shall be held in the place where the offence was committed (art. 8);

(b) If the place where the offence was committed is unknown, the court of the place where the accused is seized, or, if he is not seized, the court of his place of domicile shall have jurisdiction;

(c) If it is still impossible to determine which is the proper court, then the court exercising the first procedural step in the criminal proceeding shall have jurisdiction (art. 9);

(d) Jurisdiction over offences committed outside Turkey but which should be prosecuted in Turkey, according to the relevant articles of the Criminal Code, is determined according to article 9. In this case, the court of the place where the accused is seized, or, if he is not seized, the court of his place of domicile, or, if he is not resident in Turkey, the court of his last place of domicile shall have jurisdiction (art. 10);

(e) If an offence is committed on a maritime vessel, or aircraft, bearing the Turkish flag on the high seas, or in the air, or in a foreign port or foreign territorial waters, the court where the action is brought is the court of the port of first arrival in Turkey after the offence has been committed, or the court of the place where it is registered (art. 11).

Article 6

34. Article 19/3 of the Constitution stipulates that individuals against whom there are strong indications of having committed an offence can be arrested by decision of judge, solely for the purposes of preventing escape or preventing the destruction or alteration of evidence. Similar other circumstances which necessitate detention and are prescribed by law may also lead to their arrest.

35. In parallel with the constitutional clause, the conditions requiring the arrest of an individual are specified in article 104 of the Code of Criminal Procedure; the suspect is arrested if the crime he committed falls within the jurisdiction of Turkish courts.

36. On the other hand, in accordance with the bilateral or multilateral conventions on extradition to which Turkey is a party, a person to be extradited can be provisionally arrested by court (art. 16/4 of the European Convention on Extradition foresees that provisional arrest shall be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition. It shall not, in any event, exceed 40 days from the date of such arrest.)

37. If an extradition request is accepted, the local investigating magistrate may issue a warrant of arrest against the requested person (Penal Code, art. 9).

38. Turkey became a party to the Vienna Convention on Consular Relations of 24 April 1963, with Law No. 1901, dated 20 May 1971. Article 36 of the said convention formulates the principles on the contacts of convicted or arrested foreigners with their consulates. In accordance with paragraph 1 (b) of article 36, all foreigners arrested or convicted in Turkey are duly registered in their consulates and permitted to contact them, unless they demand otherwise.

Article 7

39. The Turkish Criminal Code and the Code of Criminal Trial Procedure formulate a system on how the Turkish courts would handle crimes under their jurisdiction. If a person who has committed a crime foreseen in article 7, paragraph 1, of the Convention against Torture and has requested to be extradited in relation with this crime is not extradited, then he will be prosecuted in Turkey. However, if a foreigner commits the crime foreseen in article 7, paragraph 1, against another foreigner in a foreign country, he can be prosecuted in Turkey only when the Minister of Justice requests so and the crime, according to Turkish law, entails a punishment restricting liberty for a minimum authorized period of not less than three years.

40. Those against whom an investigation has been launched on account of having committed the crimes foreseen in article 4 of the Convention, shall be subjected to the ordinary criminal trial procedures.

Article 8

41. In the Turkish legal system, extradition may be performed, even if there is no extradition agreement between the two States. However, Turkey has become a party to a multitude of international conventions on extradition;

besides the European Convention on Extradition, Turkey has enacted bilateral extradition agreements with Yugoslavia, Hungary, Poland, Romania, Bulgaria, Egypt, Syria, Jordan, Tunisia, Libya, the United States of America, Iran and Pakistan.

42. The crimes indicated in article 4 fall into the category where extradition is possible. Extradition is performed in accordance with article 9 of the Penal Code. When the accused is not a Turkish citizen and when the felony is not a political, military or related one, extradition shall be granted upon the decision of court and with the consent of the Government. If the felony is a political, military or related one, extradition cannot be granted.

43. Since Turkey permits extradition, even without an extradition agreement, the second paragraph of article 8 is practically fulfilled.

Article 9

44. Turkey is a part of a wide network of juridical assistance in criminal proceedings. To this effect, she ratified the 1959 European Convention on Mutual Assistance in Criminal Matters. Turkey is also a party to bilateral juridical assistance conventions with the United States of America, Poland, Yugoslavia, Hungary, Romania, Bulgaria, Syria, Egypt, Tunisia and Pakistan. Moreover, demands for juridical assistance are generally fulfilled, in compliance with the principle of reciprocity, even in the non-existence of a legally binding document.

Article 10

45. In accordance with the Constitution of the Republic of Turkey, no one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity (art. 17/3). Torture or cruel, inhumane treatment of individuals by public officers are liable to various penalties in the Penal Code (arts. 243-251). On the other hand, an order which in itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility (art. 137/2 of the Constitution). These fundamental principles of law and the importance of human rights are taught at schools, and also at Police Academies, Colleges and the professional training courses of the Police.

Article 11

46. In accordance with article 19 of the Constitution, the person arrested or detained shall be brought before a judge within 48 hours and within 15 days in the case of offences committed collectively (excluding the time taken to send him to the court nearest to the place of seizure).

47. According to article 128 of the Code of Criminal Procedure, the accused must be brought before the nearest minor court, no later than one day following his arrest or detention. (Art. 128, para. 1). In collective crimes which involve three or more people, this period can be extended up to 15 days by written order from public prosecutor or judge of the minor court. Law No. 3233 of 25 June 1985 has amended Law No. 2559 of 4 July 1934 concerning the duties and authority of the Police: the detention periods envisaged in the Code of Criminal Procedure are now entirely part of Law No. 2559.

48. In line with article 143 of the Constitution, State Security Courts were established to deal with offences against the integrity of the State, its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State. People who are detained or arrested for crimes which are under the jurisdiction of State Security Courts must be brought before a judge not later than two days, and in collective crimes not later than 15 days (art. 16 of Law No. 2845, dated 16 June 1983).

49. In the case of declaration of a state of emergency, in accordance with Articles 119 and 120 of the Constitution, the detention periods in Article 128 of the Code of Criminal Procedure can be doubled by written order from public prosecutor or judge. In the case of declaration of martial law, which is another type of emergency rule, envisaged in Article 122 of the Constitution, the detention period is 15 days. This period can be extended up to 30 days in exceptional circumstances (art. 15 of Law No. 1402 on Martial Law). (At present martial law is not in force in Turkey).

50. A bill of amendments to the Code of Criminal Procedure shortening the detention periods has been submitted to the Grand National Assembly by the Government. In this bill, the one-day normal detention period in article 128 of the Code of Criminal Procedure is preserved. However, the detention period for collective crimes is aimed to be shortened from 15 days to four days for offences which fall within the jurisdiction of ordinary criminal courts and to six days for offences which fall within the jurisdiction of the State Security Courts. A provisional five-year application period is envisaged for crimes which fall within the jurisdiction of the State Security Court. Within this period, the detention period for such crimes could be extended up to 10 days by order from public prosecutor or judge.

51. Those who are detained are unexceptionally taken under medical survey. Prisoners have medical check-ups at regular intervals.

52. Since torture and ill-treatment are crimes to be automatically investigated under Turkish legislation, the competent authorities (public prosecutors) automatically launch an investigation for each and every case as soon as they learn of the allegation. If authenticated, the persons responsible are punished and subjected to disciplinary measures.

Article 12

53. According to the Turkish Penal Code, torture is a crime to be ex officio investigated by public prosecutors (art. 243): as soon as the Public Prosecutor is informed of the occurrence of a crime, he is required to make the necessary investigation for the purpose of deciding whether there is any necessity for the filing of a public prosecution (art. 153 of the Criminal Procedure Code).

54. If a public officer, while performing his duty, learns of the occurrence of an offence related to his duty which requires initiation ex officio of legal proceeding, he must report it to the relevant authority (art. 235 of the Penal Code). Moreover, whoever, being a public officer, abuses his office in any manner other than described in the Code, shall be punished by imprisonment for up to three years (art. 240 of the Penal Code).

Article 13

55. In accordance with article 74 of the Constitution, entitled "Right of Petition", Turkish citizens have the right to apply in writing to the competent authorities and to the Grand National Assembly with regard to requests and complaints concerning themselves or the public.

56. The system on how the right of petition could be used is shown in Law No. 3071 of 1 January 1984 entitled "The use of the Right of Petition". According to this Law, the result of the process initiated upon a request or complaint of a Turkish citizen concerning himself or the public shall be made known to him in no later than two months (art. 7). The Law also regulates the right to petition to the Grand National Assembly.

57. Reporting of crimes is regulated in article 151 of the Code of Criminal Procedure. According to article 151, crimes may be reported orally or in writing to public prosecutors, police officials or judges of minor courts. Such reports may also be made to the legal authorities through governors, administrative chiefs of towns or districts. As soon as they are informed of the occurrence of a crime, public prosecutors are required to make the necessary investigation in order to decide whether there is any necessity for the filing of a public prosecution (art. 151 of the Code of Criminal Procedure).

58. If the petitioner is, at the same time, the aggrieved, he may, within 15 days after notice, object to the Chief Justice of the nearest court which sees the aggravated felony cases and with which the Public Prosecutor is connected (art. 165). If the court is convinced that the petition is well founded and rightful, it orders opening of a public prosecution. The Public Prosecutor executes this decision (art. 168). Any person who is injured by the offence may, at any phase of the investigation, intervene in the public prosecution (art. 365).

59. Perjury and false swearing is punished in article 286 and the following articles of the Penal Code. Whoever has caused a person to act as a witness, expert witness or interpreter in order to have him commit perjury, through giving money or providing or promising a benefit or through inciting or threatening or through using fraud, ruse or influence, shall be punished by heavy imprisonment for one month to one year (art. 291).

Article 14

60. Article 40 of the Constitution states as follows: "Everyone whose constitutional rights and freedoms are violated has the right to request prompt access to the competent authorities. Damages incurred by any person through unlawful treatment by holders of public office shall be compensated by the State. The State reserves the right of recourse to the official responsible".

61. Article 41 of the Turkish Law of Obligations states that whoever unlawfully harms somebody on purpose or because of omission, negligence or recklessness has to make up for the loss incurred. According to this article, the right to indemnification arises from an unlawful act which causes harm. Violation of law and regulations is an unlawful act (decision No. 1971/4922-6390, dated 28 June 1971, of the Fourth Judicial Department of

the Supreme Court of Appeal). In this case, a person who incurs a loss can open a lawsuit for indemnity. However, article 13 of Law No. 657 on Public Officials states that the State is responsible for making up for the loss incurred during the use of public authority. In the light of this article, in case a loss occurs because of an unlawful act of a public officer, the State shall be directly responsible and the indemnity case will be opened in an administrative court.

62. The following decisions of the Council of State, the supreme administrative court, can be referred to:

(a) In a case on the demise of a person who had been accused of membership in an illegal organization, because of torture in detention, the Council of State decided on the responsibility of the State and payment of indemnity for both material and moral loss, separately to the parents (Decision No. 82/206-83/665 of 30 March 1988);

(b) In a case on the demise of a person for trauma in head, after having been beaten in the police station, the Council of State decided that the security authorities were responsible for the incident and instructed payment of indemnity for both moral and material loss to his wife and children (Decision No. 82/2539-83/1357 of 1 June 1983);

(c) In a case on the demise of a person arrested while distributing handbills of an illegal organization and beaten on the way to the police station, the Council of State decided on the responsibility of the police and instructed compensation of both moral and material loss to the parents (Decision No. 84/2297-86/253 of 12 February 1986).

63. Police is authorized to use arms unless the culprit cannot be captured by other ways. In a case on the demise of the culprit by a shot from police car at a moment when the police car approached the culprit's car, the Council of State again decided on the unlawfulness of the shooting and instructed payment of indemnity for both moral and material loss to the victim's parents, wife and children. (Decision No. 82/7751-83/1596 of 22 June 1983).

Article 15

64. "Testimony on free will" is a general principle of law in the Turkish legal system; "the right not to answer" is a constitutional right. Article 38/5 of the Constitution states that "No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence". The purpose indicated in the explanation of this paragraph is to prevent torture or cruel, inhumane and degrading treatment to prisoners.

65. "The right not to answer" is also inserted in the Code of Criminal Procedure. Article 135 states that before questioning, the accused must be advised of the nature of charges against him and asked if he wishes to answer such charges. Questioning shall not be directed toward weakening or discrediting any evidence which the accused may have or wish to marshall in his own defence. A similar clause is also found in the Law on the Establishment and Trial Procedure of Military Courts.

66. The Supreme Court of Appeal instructed that testimonies must be taken in an atmosphere bereft of any moral or physical pressure. The Court also decided that the prosecution should prove that the testimony reflects the accused person's free will and support it with other evidence in the legal proceeding (Decision No. 1988/2015-3291, dated 28 September 1988 of the First Criminal Department). The district court concerned was opposed to this decision given by the First Criminal Department of the Supreme Court of Appeal. The decision was later submitted to the General Criminal Council of the Supreme Court. The General Council corroborated that a testimony given under pressure, even supported by witnesses, shall not be used as an evidence. Accordingly, the Supreme Court annulled the condemnatory verdict of the district court (Decision No. E 1989/1-90-K-144 of 17 April 1989). This humanitarian approach, supported in the decision of the Supreme Court of Appeal, is systematized in the Turkish Law.

67. Article 254 of the Code of Criminal Procedure and article 163 of the Law on the Establishment and Trial Procedure of Military Courts state that the judge shall weigh the evidence submitted in accordance with his assessment of the investigation and the trial. This system of weighing the evidence in all conscience is not a system of arbitrariness. The judge's judgements must be in accordance with the Constitution, laws and the general principles of Law (the Constitution, art. 138). In order to be in conformity with the Constitution, the judge must take article 15 of the Convention against Torture into consideration. And, in order to be in conformity with the laws, he should interpret the legislation in the light of the general principles of the Constitution.

68. In cases which fall within the jurisdiction of the ordinary criminal and State security courts, only statements of the accused in the record prepared by the judge shall be read as evidence of his confession (art. 247/1 of the Code of Criminal Procedure). This principle was taken from the German Law without any alteration. Hence, the record prepared at the preparatory investigation, be it under pressure or not, is not used in court as evidence.

69. However, the system applied in the Military Criminal Procedure Law is slightly different: in this system, the testimony of accused, taken by a military prosecutor can be used as an evidence (art. 156 of the Law on the Establishment and Trial Procedure of Military Courts). Accordingly, any record prepared in the preparatory investigation can be used as an evidence in military courts. However, the Military High Court of Appeals instructed that judgements must not be based only on records prepared at preparatory investigation, these testimonies must be carefully scrutinized in order to be assured that they are real and sincere and that the preparatory records must be substantiated by other evidence (Decisions of the General Council No. 43-72 of 26 December 1975, No. 90-92 of 16 July 1981, No. 26-24 of 11 February 1982 and No. 11-26 of 18 February 1982). Otherwise, the general principle of law in dubio pro reo is applied on behalf of the accused.

70. In accordance with article 238/2 (a) of the Code of Criminal Procedure, if the introduction of evidence does not conform with the law, the court can disregard the new evidence. Hence, the court can disregard new evidence taken under torture or ill-treatment. As the law says "can disregard", the court used to be entitled to appreciate which new evidence is unlawfully collected or not. However, after the Convention against Torture came into force in Turkey, this "authority to appreciate" has automatically been rendered void. Now, the court must disregard such evidence.

71. Undoubtedly, in a legal proceeding the allegation of the accused that the evidence collected against him or his testimony has been taken under torture or ill-treatment is not enough for the judge to disregard this evidence. The court shall require that the contested evidence be refuted by contradictory new evidence or that there is a strong suspicion on the authenticity of the contested evidence. Otherwise, the authority of the court to freely weigh the evidence shall be abused and this authority shall be arbitrarily used.

72. The alternatives of disregard of testimonies or evidence alleged to have been taken under torture or ill-treatment are indicated below.

A. The accused who alleges that he was subjected to torture notified the public officials who had tortured him

1. The accused enabled the prosectuion to open legal proceedings

At the end of the case:

(a) If the public officials are condemned, the accused proves that he is a victim of torture or ill-treatment. In this case, the court automatically comes to the conclusion that the testimony and evidence were taken under pressure and disregards them all. At this point, the court shall not look into whether the testimony or evidence reflects the reality or not;

(b) If the public officials are acquitted after having proven that they did not torture or ill-treat the accused, this means that the allegation of torture or ill-treatment raised by the accused is unfounded. In this case, the court continues to evaluate the testimony and evidence;

(c) If the public officials are acquitted because of the lack of evidence, this means that the court decided on their innocence. However, this decision does not refute the evidence, if existing, which supports the accused's allegation. The acquittal does not mean that the crime was not committed. If there is evidence or suspicion on the commission of a crime of torture or ill-treatment, the court cannot straight away condemn the accused by basing its judgement on the contested testimony and evidence. In this case, this suspicious situation shall be evaluated on behalf of the accused. However, if the court can clear the contested testimony and evidence with other evidence and prove, without any doubt, that the accused is guilty, then it can disregard the suspicion and give a condemnatory verdict;

(d) If the public officials are acquitted because of the inadequate evidence, in this case there is some evidence on the commission of torture or ill-treatment; however, they are indirect and vague. There might really be a case of torture or ill-treatment and the concerned public officials might really be the culprits. Nevertheless, this vague, suspicious situation has been evaluated on behalf of the public officials. The vagueness may also be used on behalf of the accused who claims that he was tortured. In this situation, the court shall disregard the contested testimony and evidence unless they are substantiated by other evidence.

2. The accused could not lead the prosecution to open legal proceedings

The prosecution might have investigated the allegation and reached a decision not to prosecute. The objection of the accused to the decision might

have been refused by the Criminal Court (Code of Criminal Procedure, art. 167). Both the decision of the prosecutor not to launch a legal proceedings and the judgement of the Criminal Court is not a final verdict against the accused. In such a situation, neither were the concerned public officials acquitted, nor was the non-existency of a crime proven. Indeed, public prosecution may later be opened upon the collection of newly discovered evidence (Code of Criminal Procedure, art. 167/2). In this case, the court must, on its own, verify the authenticity of testimony and evidence of the preliminary investigation. If the court collects some findings signifying that the preliminary investigation records are products of torture, then the court must evaluate its suspicion on behalf of the accused. However, if the court can support the contested testimony and evidence by some other evidence, then it can give a condemnatory verdict.

B. The accused who alleges that he was subjected to torture failed to notify the public officials who had tortured him

This failure may be for various reasons: the accused may fail to remember the public officials who really tortured him; or he may know them, but may not be interested in their punishment. In fact the accused who raises an allegation of torture in the court is not obliged to notify the prosecution and to prove his allegation. The authority who is to prove is the public prosecutor. In this case, if the accused's allegation of torture covers all evidence collected in the preliminary investigation and brought to the court, the court shall be suspicious of their authenticity and shall evaluate its suspicion on behalf of the accused. However, if the allegation covers only a part of the evidence, the court shall consider the remaining part of evidence submitted by the prosecution.

Article 16

73. The acts mentioned in article 16 of the Convention are subjected to punishment according to articles 243-251 of the Turkish Penal Code which are briefly mentioned above in the explanation relating to article 4:

Article 243

Whoever, being a chief or member of court or council or a public officer, tortures an accused person in order to make him confess his offence, shall be punished by heavy imprisonment for not more than five years and shall be disqualified from holding public office, temporarily or for life. The offender shall be punished even where he had received an order or encouragement from his superior. Superiors are considered as accessory offenders.

If the tortured person dies as a result of being tortured, the perpetrator shall be punished according to the provisions of article 452. If this torture has caused the victim permanent loss of any organ of the body or any other permanent disability, the perpetrator shall be punished in accordance with the provisions of Article 456.

Article 244

Whoever, being a judge, contrary to provisions of law, adjudges a sentence or makes a ruling based on bias for or prejudice against a person, shall be punished by imprisonment for not less than three months, not more than three years and shall be temporarily disqualified from holding public office.

Article 245

Those persons authorized to use force and all police officers who, while performing duty or executing their superiors' orders, threaten to treat badly or to cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for not less than one month, not more than three years and shall be temporarily disqualified from holding public office. Where the offence committed is more serious than the offences defined herein, the punishments for such offences shall be increased by one third.

Article 246

If a person's property or real estate is purchased by force, or seized or sold dependent upon an invalid claim, or if the owner's property rights are violated in absence of public purpose and without paying its price in advance by government officials, the property shall be returned to the owner and, where the property no longer exists, the offender shall be compelled to pay its value and the offender shall be punished by imprisonment for not less than three months, nor more than two years and shall be temporarily disqualified from holding public office.

Article 247

If any public officer or any other person or his employee undertaking the collection of public revenue collects lawful taxes or fees or duties in excess of the amount specified by laws and regulations, such public officer or other persons shall be imprisoned for six months to three years and such employees shall be imprisoned for not more than six months. The excess amount collected shall be returned and the offender shall be ordered to pay twice this amount as a fine.

Article 248

If a public officer, in addition to the fine prescribed by law, takes money or any other item as a punishment, or collects a fine, which he is lawfully assigned to collect, in excess of the lawful amount, the additional sum he has thus taken shall be returned to its owner and twice this amount shall be taken from him as a fine and he shall be punished by imprisonment for six months to three years.

Article 249

If any public officer or any other person uses unpaid persons in any kind of work other than in public services specified by laws or regulations or deemed necessary by the public, wages, according to local rates for persons thus used, shall be collected from the offender and given to these persons and the offender shall be banished for a period of six months to three years depending upon the gravity of the offence. Where the offender is a public officer, he shall be temporarily disqualified from holding public office.

Article 250

Officials whose duty it is to serve notifications or warrants, soldiers, gendarmes, military or civil officers who quarter at the houses of individuals without their consent or who take food or fodder without paying for it, shall be ordered to reimburse the equivalent of what they have received and shall be imprisoned for not more than one month. If soldiers or gendarmes act as a group and commit the offences defined in the foregoing paragraph, the cost of the items taken shall be collected from their commanding officer and they shall be punished by imprisonment for six months to three years. If force or violence is applied during the commission of this offence, the punishment shall be increased by one third.

Article 251

If a public officer commits a felony against a person during the performance of his duty, the punishment prescribed by law for that felony, shall be increased by one third to one half, where not so provided by law.

PART III

IMPLEMENTATION OF THE CONVENTION

74. In spite of the existence of the United Nations international control mechanism to prevent torture and the legal remedies that have been effected since the entry into force of the Convention, there have been allegations of torture, specially during the detention period. The report prepared by the Amnesty International on 31 October 1989 has dealt largely with such allegations. The Turkish Government has spared no efforts to investigate each and every allegation that has been made by non-governmental organizations such as the Amnesty International and has submitted informatory reports to them through all their sections. However, many of the allegations were discovered to be ill-founded; several people who were alleged to have died of torture have in fact died due to other diseases such as AIDS, tuberculosis, verified by doctor's reports. Others alleged victims of torture were discovered to be alive and in good health condition.

75. However, the interest of the non-governmental organizations in and outside of Turkey in the implementation of human rights was widely appreciated by the government authorities. It is considered that this interest will assist the promotion of human rights implementations in Turkey. Being a party to international control mechanism has increased the sensitivity towards human

rights violations in Turkey. The press has publicized such cases. The prosecutors have initiated lawsuits against the alleged committers of such crimes. Such cases were however severely penalized.

76. During the period 1 January - 31 December 1989, 508 cases of torture allegations have been brought to Turkish courts and 15 policemen have been convicted to prison sentences. There has also been some shortcomings in the implementation of the Prime Ministry's circulars dated 26 September 1989 and 3 April 1990 to end the incommunicado detention and to prevent the use of torture. They have largely been due to the fact that the defendant was not legally authorized to be proxy. Ways of improving such inconveniences are being considered by the concerned authorities.

77. Amnesty International has raised some questions as to the validity of article 15 of the Convention in Turkish legal practice. Although the Convention against Torture has, according to article 90 of the Constitution, become an integral part of the Turkish legislation, a military court has taken an interim decision with a contradictory opinion. The Turkish courts are completely independent; there cannot be interference in their jurisdiction from either the legislative or executive power; however they are bound by the decisions of the Supreme Court of Appeals. The Supreme Court in fact has (as explained in detail under Article 15) adopted several final decisions confirming the validity of the provision of article 15 of the Convention in the Turkish legal practice.

78. During the period of implementation of the United Nations and European Conventions Against Torture, Turkey has felt the need to set up a new surveillance mechanism at the national level. The three parties represented at the Paliament have submitted a joint proposal to establish a parliamentary commission on human rights in the Grand National Assembly with some legislative and executive powers in the area of human rights. When adopted by the parliament, the Commission will be entitled to propose new bills or amendments to existing laws if and where discrepancies are observed between national laws and international commitments.

79. Education of law enforcement agencies is considered to be a useful means for promoting the implementations of human rights in Turkey. For this reason, courses on human rights are included in the curriculum of the Police Academy and police colleges. Furthermore, periodic meetings are arranged at the General Directorate for Security Affairs to inform the provincial law enforcement officials about Turkey's new international commitments within the United Nations Convention Against Torture. The Turkish Government is also making seminars and meetings for judges and prosecutors in different locations in Turkey to inform them about how the provisions of the Convention can be raised by defendants and included ipso facto in court decisions as they have become part of Turkish national legislation.